

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1022 (Sub-No. 1X)

ARIZONA & CALIFORNIA RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN  
SAN BERNARDINO AND RIVERSIDE COUNTIES, CAL.

Decided: December 28, 2010

On June 21, 2010, a decision and notice of interim trail use or abandonment (NITU) was served in this proceeding authorizing a 180-day period for San Pedro Trails, Inc. (SP Trails), to negotiate an interim trail use/rail banking agreement with Arizona & California Railroad Company (ARZC) for a 49.40-mile rail line between milepost 0.0 at Rice and milepost 49.4 at Ripley, in San Bernardino and Riverside Counties, Cal. The negotiating period under the NITU expired on December 18, 2010.

By letter filed on December 9, 2010, SP Trails requests an extension of the NITU negotiating period until June 17, 2011. SP Trails states that it has been unable to finalize negotiations with ARZC, but that the parties continue to negotiate and are confident of succeeding in reaching an agreement. ARZC filed a response on the same date and agrees to the extension request. Also, ARZC requests the Board to confirm that the consummation deadline for the abandonment will be August 16, 2011, upon a grant of the NITU extension request.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and has indicated its willingness to continue negotiations by agreeing to an extension, the Board retains jurisdiction and the NITU negotiating period may be extended.<sup>1</sup> Under the circumstances, further extension of the negotiating period is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Vill. v. Mo. Pac. R.R., 95 F.3d 654, 659 (8th Cir. 1996). Accordingly, the NITU negotiating period will be extended until June 17, 2011, and the deadline to consummate the abandonment and file a notice of consummation will be August 16, 2011.<sup>2</sup>

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<sup>1</sup> See Rail Abans.—Use of Rights-of-Way as Trails—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).

<sup>2</sup> Under the Board's rules at 49 C.F.R. § 1152.29(e)(2), a railroad is required to file a notice of consummation within 60 days after expiration of a legal or regulatory barrier. Since the extension request granted herein is scheduled to expire on June 17, 2011, ARZC's deadline for filing its notice of consummation is August 16, 2011.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The request to extend the interim trail use negotiating period is granted.
2. The negotiating period under the NITU is extended to June 17, 2011.
3. The authority to abandon must be exercised, and the notice of consummation must be filed, on or before August 16, 2011.
4. This decision is effective on its service date.

By the Board, Julia M. Farr, Acting Director, Office of Proceedings.